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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT SEATTLE

11                  VERONICA GAMBLE,

12                  Plaintiff,

13                  v.

14                  STATE FARM MUTUAL  
15                  AUTOMOBILE INSURANCE  
16                  COMPANY,

17                  Defendant.

18                  CASE NO. C19-5956 MJP

19                  ORDER DENYING MOTION TO  
20                  SEAL

21                  This matter comes before the Court on Defendant's Motion to Seal. (Dkt. No. 168.)

22                  Having reviewed the Motion, the Opposition (Dkt. No. 170), the Reply (Dkt. No. 173), and all  
23                  supporting materials, the Court DENIES the Motion.

24                  **BACKGROUND**

25                  In October 2021, this matter proceeded to a five-day jury trial that resulted in a \$950,000  
26                  judgment in favor of Plaintiff. (See Dkt. Nos. 124-128, 133, 135.) With the COVID-19 pandemic  
27                  still posing safety risks to in-person proceedings, the Court conducted the trial by remote means  
28                  using Zoom. But the proceedings were open to the public by video or telephone access, just as

1 any in-person trial would have been had the trial occurred at the courthouse. During trial,  
2 Plaintiff elicited testimony about and presented argument regarding Trial Exhibit 15, a document  
3 containing information about State Farm's adjuster bonus/incentive program. (See Declaration of  
4 Kathryn Knudsen Ex. A (Dkt. No. 171-1).) Although State Farm had designated the document as  
5 confidential pursuant to the Protective Order entered in the case, it took no steps to keep the  
6 document or testimony about it confidential during trial or in the pretrial preparation. Counsel for  
7 Plaintiff confirmed with the Court on the record that all of the exhibits were part of the public  
8 record, and Defendant's counsel made no objection or request to seal Exhibit 15 or testimony  
9 about it. (See Knudsen Decl. Ex. B.) Now, over three years later, State Farm seeks an order  
10 sealing those portions of the trial transcripts that relate to and discuss Exhibit 15.

## 11 ANALYSIS

12 In its Motion, State Farm argues that the Court should seal portions of the trial transcript  
13 which discuss Exhibit 15 on the theory that its contents were designated as confidential under the  
14 Protective Order and that there is good cause to seal them under Fed. R. Civ. P. 5.2. The Court  
15 disagrees and finds two significant flaws in the request.

16 First, the Court finds that State Farm long ago waived any right to assert confidentiality  
17 over trial testimony and argument concerning Exhibit 15. While Exhibit 15 was designated as  
18 confidential under the Protective Order, State Farm failed to exercise any of its rights under that  
19 Order to keep the document and testimony/argument about it confidential. As the Protective  
20 Order stated, "the protections conferred by this agreement do not cover information that is in the  
21 public domain or becomes part of the public domain through trial or otherwise." (Protective  
22 Order at 2 (Dkt. No. 23).) And the Order made clear that "[i]f a party or non-party desires to  
23 protect confidential information at trial, the issue should be addressed during the pre-trial  
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1 conference.” (Id. at 6.) Had State Farm wished to maintain the confidentiality of the document, it  
 2 should have raised this issue during the pretrial conference—it did not. And State Farm took no  
 3 action during the trial that would have been consistent with its present belief that the document  
 4 and testimony/argument about it should be sealed. Indeed, when Plaintiff’s counsel confirmed  
 5 that all exhibits were part of the public record at the end of trial, State Farm said nothing. (See  
 6 Knudsen Decl. Ex. B.) State Farm’s conduct during trial and the passage of more than three  
 7 years confirm that it waived any right to seek to seal any part of the trial transcripts concerning  
 8 Exhibit 15. “It is well-established that the fruits of pretrial discovery are, in the absence of a  
 9 court order to the contrary, presumptively public.” San Jose Mercury News, Inc. v. U.S. Dist.  
 10 Court–N. Dist., 187 F.3d 1096, 1103 (9th Cir. 1999). That rule applies squarely to this matter.  
 11 And contrary to State Farm’s representation, the trial was not “closed”—it was entirely open to  
 12 the public, and members of the public viewed it. (See Declaration of P. Jason Skuda Decl. ¶ 4  
 13 (Dkt. No. 172).) For these reasons, the Court DENIES the Motion.

14 Second, even if State Farm had not waived its right to redact trial testimony, the Court  
 15 finds no grounds to seal the transcripts.

16 The party seeking to keep material filed under seal must meet either the “good cause” or  
 17 “compelling interest” standard. See Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092,  
 18 1101 (9th Cir. 2016). The “compelling interest” test applies if “the motion [related to which the  
 19 materials are filed] is more than tangentially related to the merits of a case.” Id. Here, the  
 20 compelling interest test applies, because Exhibit 15 the discussion about it was “more than  
 21 tangentially related to the merits of the case.” Id. Under the “compelling interest” test, the Court  
 22 must “conscientiously balance[] the competing interests of the public and the party who seeks to  
 23 keep certain judicial records secret.” Kamakana v. City & Cty . of Honolulu, 447 F.3d 1172,

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1 1178 (9th Cir. 2006) (citation and quotation omitted). The Court may only seal records if it  
2 “base[s] its decision on a compelling reason and articulate[s] the factual basis for its ruling,  
3 without relying on hypothesis or conjecture.” Id. (citation and quotation omitted). “The burden is  
4 on the party requesting a protective order to demonstrate that (1) the material in question is a  
5 trade secret or other confidential information within the scope of Rule 26(c), and (2) disclosure  
6 would cause an identifiable, significant harm.” Foltz v. State Farm Mutual Auto. Ins. Co., 331  
7 F.3d 1122, 1131 (9th Cir. 2003) (citation and quotation omitted). The Local Rules require the  
8 party seeking to keep materials under seal to show: (1) “the legitimate private or public interests  
9 that warrant the relief sought”; (2) “the injury that will result if the relief sought is not granted”;  
10 and (3) “why a less restrictive alternative to the relief sought is not sufficient.” Local Civil Rule  
11 5(g)(3)(B). “Evidentiary support from declarations must be provided where necessary.” Id.

12 State Farm has not demonstrated compelling reasons to seal the trial transcripts. The  
13 information it seeks to seal has been in the public record for over three years, as the trial itself  
14 was open to the public and transcripts have been available. (See Knudsen Decl. Ex. A.) Nowhere  
15 has State Farm identified any harm from the fact that this information has already been public.  
16 This undermines any present claim that further public release of the transcripts would harm State  
17 Farm. The declaration that State Farm relies on also fails to explain why further release of  
18 testimony about the stale information in Exhibit 15 would harm State Farm. The declarant  
19 discusses the document itself, but not the trial testimony that State Farm seeks to seal. That alone  
20 is fatal. Additionally, the declarant speaks to and refers to documents presented in separate  
21 litigation which have not been presented to this Court. (See Declaration of John Feely (filed as  
22 Ex. 8 to the Declaration of Dan Kirkpatrick) (Dkt. No. 168-5).) This further undermines the  
23 declaration’s utility. Based on the record presented, State Farm has failed to provide evidentiary  
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1 support for its position. In addition to having waived the issue, State Farm fails to meet its  
2 burden to support sealing of the transcript. This is a second, independent reason the Court  
3 DENIES the Motion.

4 **CONCLUSION**

5 State Farm's request to seal the trial transcripts has no merit. It long ago waived any right  
6 to having the transcripts sealed, and even if it had acted timely, it has failed to demonstrate  
7 compelling reasons that outweigh the public's right to access the Court's docket. The Court  
8 DENIES the Motion and will not seal the trial transcripts.

9 The clerk is ordered to provide copies of this order to all counsel.

10 Dated January 22, 2025.

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12 Marsha J. Pechman  
United States Senior District Judge

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